IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4922 OF 2004

Girish Raghunath Mehta ... Applicant

versus

Insp.of Cus.(P),N.C.,Mumbai ... Respondent

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Mr. A.P. Mundargi, with Mr. S.R. Mishra, for the Applicant.

Mr. D.N. Salvi, for the Respondent No.1.

Mr. A.S. Gadkari, A.P.P., for the Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

16th February 2005

P.C.:

01. Heard Counsel for the parties. Perused the record. Although Mr. Mundargi has criticised the opinion of the lower Court in respect of legal position expounded by the lower Court inter alia on construction of section 37 of

the N.D.P.S. Act, in my opinion, it is not necessary to go into all those questions, because the reason, which has weighed with the lower Court in rejecting the bail appliction filed by the Applicant, who is accused No.1, as spelt out from para 9 of the order in question is good enough to uphold the conclusion reached by the lower Court for the reasons, which I will indicate a little later.

02. The Applicant is proceeded against for offence punishable under sections 8(C), 15, 29 and 30 of the N.D.P.S.Act and section 464, 467, 468 and 471 of the Indian Penal Code, for dealing in poppy straw, which is a contraband item. Para 9 of the order, which is questioned in this application while praying for bail, reads thus:

> " There is no comment as to the facts and figures placed before the Court by the prosecution vide replies dated 15-10-04 and 25-10-04 coming forth from the applicant-accused Girish Mehta. Panchnama dated 27-2-2004 reveals that 5652.800 Kgs. of poppy-straw products,

i.e., 4227.80 kgs. of poppy-straw powder and 1425 kgs. of poppy fragmented pieces, were found lying in the warehouse of the applicant-accused Girish Mehta. However, going by the register maintained by the applicant-accused, there was excess of 42 kgs. of poppy-straw powder and deficit of 150 kgs. of poppy fragmented pieces. It is also seen from the sales register that there are 168 blank entries showing sale of 450 grams of poppy-straw products on every occasion in relation to each entry. Broadly, this would mean that about 84 kgs. - commercial quantity - of poppy straw products were sold/removed from the warehouse without leaving any trace of the deal/s or alternatively the stage was set ready or preparation was made to indulge in its illicit trafficking. It is also pointed out by the prosecution that though there are several entries made in the names of Mr.Ramesh Koli, Kashmira Kaur, Parsing Kaur, Tejinder Kaur and Samsher Singh in the sales

register, the said persons have denied the purchase of any poppy-straw product by them from the applicant-accused Girish Mehta vide their statement."

03. The position that emerges from the facts stated therein is that the panchnama dated 27th February 2004 reveals that during the relevant period, 5652.800 Kgs. of poppy straw (i.e., 4227.80 kgs. of poppy-straw powder and 1425 kgs. of poppy-straw fragmented pieces) were found lying in the warehouse of the Applicant-accused; whereas, the register maintained by the Applicant-accused, which, I am told, was verified by the trial Court, and thereafter opinion recorded by the trial Court, reveals that there was excess of 42 kgs. of poppy-straw powder and deficit of 150 kgs. of poppy-straw fragmented pieces. Assuming that the Applicant has to be given credit for the excess of 42 Kgs. of poppy-straw powder and due adjustment has to be given against the 150 Kgs. of deficit poppy-straw fragmented pieces, even so, the quantity which is found unexplained comes to 108 Kgs. which is obviously far exceeding the

commercial quantity. Sofar as this discrepancy is concerned, the explanation, which is being offered by the Applicant will be matter for trial, being his defence. The manner in which records have been maintained by the Applicant can be spelt out from the evidence already collected, including Section 67 statement of, amongst other, Ms. Leena Naryan Jagtap, who was working with the Applicant, having stated that the Applicant used to provide xerox copies of ration cards and driving licence of different persons from which she used to copy the names and addresses in the sales register and she did not put any date against each of the said entry made by her as per the instructions of the Applicant herein, accused No.1. She has further disclosed that against those entries, Applicant, accused No.1, used to put the signature in the name of the alleged customer. She has admitted in her statement under section 67 that there was no actual sale of poppy-straw, but the entries were made to show fictitious sale to customers. She has stated that these bogus entries (sales) were made to adjust the sales of drugs in bulk quantities to unauthorised persons. In other words, there is

evidence on record to indicate that the registers maintained by the Applicant - accused have been manipulated, that too in respect of commercial quantity, which, by itself, would attract section 15 of the Act and for which purpose, section 37 of the Act will come into play. Even if the Applicant was to be proceeded under ordinary law, the offence is one of falsification of record which is also a serious offence and since there is material to connect the Applicant with the commission of the crime and having regard to the seriousness of the offence, the question of granting bail in such matters would not arise. In any case, in the present case, as is required by section 37 of the Act, it is not possible for this Court to record the finding that there is no reason to believe that the Applicant is not guilty of the alleged offence; and if it is so, the application as filed by the Applicant will have to be dismissed because of the bar under section 37 of the Act.

04. The trial Court has also adverted to the fact that in the sales register, 168 blank entries showing sale of 450 grams of poppy straw

product on every occasion in relation to each entry has been noticed, which would come to about 84 Kgs. being commercial quantity of poppy straw so sold/removed from the warehouse. Even in that case, the provision of section 15 will be squarely attracted and for which reason, the bar under section 37 will come into play. As mentioned earlier, there is evidence on record, amongst others of the employee who was maintaining the sales registers which was expected to be maintained by the Applicant, showing involvement of the Applicant and manipulation of that record at his instance.

05. In addition, the lower Court has adverted to the fact that investigation reveals that in the register, sale has been shown in favour of certain persons, but on verification, it transpired that those persons have never purchased any poppy straw product from the Applicant. Their statements are also on record. Although the purported sale made to individuals by itself would appear to be of small quantity, but the evidence on record indicates the modus operandi of the Applicant how the registers were

maintained to show that the sale was of small quantity and not of commercial quantity.

06. As there is sufficient material on record to indicate that the sale of contraband was of commercial quantity and also of the fact that the registers have not been properly maintained; in fact have been manipulated, to give a different impression, section 15 of the Act is clearly attracted, which would leave no option for this Court but to reject the application for bail in view of the bar under section 37 of the Act. Hence, dismissed.

07. As prayer for bail has been rejected, needless to observe that the trial Court will expedite the case and ensure early disposal of the trial as High Court Expedited Case.

08. It is needless to observe that the trial Court will decide the case on its own merits in accordance with law, without being influenced by any observations made in this order or in the order passed by itself rejecting the bail application preferred by the present Applicant.

(A.M.KHANWILKAR,J.)